



DIVISION OF PLANNING FREDERICK COUNTY, MARYLAND

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TO: Frederick County Planning Commission

FROM: Mark Depo, Deputy Director
Larry Smith, Zoning Administrator

DATE: November 17, 2010

RE: Zoning Text Amendment for Floodplain, Commercial and Business
Schools, Public and Private Schools, and Boarding Stables

BACKGROUND

The Board of County Commissioners (BOCC) conducted worksessions on June 29, July 1, and October 5, 2010 to discuss a variety of issues and to consider amending specific sections of the zoning ordinance as follows:

I. FLOODPLAIN

- Change to the floodplain section to increase the "Freeboard" from 1 foot to 2 feet.
- Delete the Natural Resources Conservation Service (NRCS) reference from the flooding soils review.

II. COMMERCIAL AND BUSINESS SCHOOLS

- Change the land use term of "Commercial or Business School" to "Commercial School or Education Program" and allow the use in the ORI and LI zoning district with site plan approval.
- Add definitions for "Commercial School or Education Program" and "Satellite University or College".

III. PUBLIC AND PRIVATE SCHOOLS

- Allow a private school in the R1, R3, R5, R8, R12, R16, VC and LI zoning districts as 'PS' consistent with public schools.
- Allow private schools and public schools in the GC, ORI, and LI zoning districts as 'T' (temporary).
- Amend the definition of "Private School"

IV. BOARDING STABLES

- Add "Equine Activities" to the definition of Agricultural Activities
- Add a definition of "Equine Activities".
- Remove the definitions of "Boarding Stables" and "Commercial Boarding Stables".
- Remove "Boarding Stables" and "Commercial Boarding Stables" from the Use Table.

STAFF ANALYSIS

I. FLOODPLAIN

During the Bi-Annual Community Assistance Visit with the Maryland Flood Insurance Coordinator, staff was notified that the State Model Ordinance was being revised to increase the first floor elevation above the 100 year floodplain from 1 foot to 2 feet.

The zoning ordinance requires that the first floor elevation be at least 1 foot above the elevation of the FEMA 100 year floodplain. The benefits of increasing the height of the Flood Protection Elevation are to reduce the risk of injury; to reduce property loss, and reduce floodplain insurance premiums by approximately 30%.

The definition of FLOOD PROTECTION ELEVATION (FPE) in section 1-19-11.100 would also be changed to reflect this increase, as follows:

FLOOD PROTECTION ELEVATION (FPE). The elevation of the base flood plus 4 feet **2 FEET** freeboard.

Another issue related to the Flooding soils arose in September of last year after the State Soil Scientist notified County Staff that the Natural Resource Conservation Service (NRCS) was no longer able to review locations of proposed structures shown to be located within the limits of flooding soils. Previously the local soil scientist would conduct on-site inspections to determine limits of the flooding soils.

As a result of this action, references to Natural Resource Conservation District (NRCS) and Soil Conservation within the flooding soils text should be deleted in section § 1-19-9.100 FLOODPLAIN DISTRICT subsection (B)(7), § 1-19-9.110 ACTIVITIES WITHIN FLOODPLAIN DISTRICT subsection (B)(7)(b) and (c) and section § 1-19-9.300 STRUCTURES WITH BASEMENTS NEAR WET SOILS subsection (A)(1) as follows:

§ 1-19-9.100. FLOODPLAIN DISTRICT.

(B) (7) Any dispute of the FEMA floodplain shall be appealed to Federal Emergency Management Agency through the Zoning Administrator, ~~while disputes regarding flooding soils shall be appealed to the Natural Resources Conservation Service, through the Zoning Administrator.~~ Disputes regarding wetlands shall be appealed to the Maryland Department of the Environment.

§ 1-19-9.110. ACTIVITIES WITHIN FLOODPLAIN DISTRICT.

(B)(7) *Flooding soils.* No new development shall be permitted in areas of flooding soils unless approved through a mitigation process including the following:

(b) Determination of buildable areas by the Division of Permitting and Development Review ~~in consultation with the Soil Conservation District and the Natural Resources Conservation Service.~~

(c) Submission by the applicant of a mitigation plan for approval by the Division of Permitting and Development Review ~~in consultation with the Soil Conservation District and the Natural Resources Conservation Service.~~

§ 1-19-9.300. STRUCTURES WITH BASEMENTS NEAR WET SOILS.

(A)(1) No zoning certificate or building permit shall be issued for construction of a residential structure with a basement if proposed on or within 100 feet of "wet soils" until a soils delineation report is prepared by a licensed soils scientist or professional engineer registered in the State of Maryland. The soils report shall be submitted for review ~~by the SCD~~ prior to the Zoning Administrator's approval of the certificate or permit unless such a report was completed at an earlier stage of the development review process.

When Staff receives an application for a permit for a structure located within flooding soils a list of certified Soil Scientists is provided to the applicant. The Soil Scientist then provides a report which delineates the limits of flooding soils. This report is then reviewed by staff and a determination is made if the structure falls within the flooding soils.

The recommended changes above have not changed from the June 29, 2010 BoCC worksession Staff report. There were no recommended changes to the proposed text amendments during the worksession, by the BoCC.

II. COMMERCIAL AND BUSINESS SCHOOLS

As discussed at the BoCC worksession on June 29, 2010, the use of Technical, Trade, Satellite or Other Specialty Schools has been an ongoing issue and continues to be an issue in addressing recent requests for satellite campuses such as the Mount St. Mary's and Strayer University and other specialty courses or programs such as Culinary Arts, Frederick Community College Truck Driving, and Music schools.

As business and education programs evolve the current listed uses of Commercial or Business School, Private Schools, College or University and Elementary or Secondary School in the zoning ordinance provides a level of confusion and may restrict uses that are appropriate for a particular zoning district. Examples include, a trade school (commercial or business school) being treated as a private school and a satellite school/campus or an education program within an office setting considered as a college or university campus. To resolve the ongoing and potential future concerns related to "Commercial or Business School", Staff recommended that the use be better defined to provide clearer separation of school use types.

During the BoCC worksession, there were no changes recommended by the BoCC regarding the proposed changes to "Commercial or Business School". However, following the worksession there was concern with Staff that a satellite campus was not clearly defined and staff has proposed changes to address this concern.

Proposed Text in **BOLD** text, deleted text in ~~strikethrough~~ text.

In Section 1-19-5.130, Use Table, remove "or business schools" from "Commercial or business school" under the Commercial Business and Personal Services section of the use table and add "schools or education programs" and allow the use within the ORI and LI Zoning Districts as 'PS'.

	Zoning Districts													
Uses	RC	A	R1	R3	R5	R8	R12	R16	VC	HS	GC	ORI	LI	GI
Commercial Business and Personal Services														
Commercial or business schools SCHOOL OR EDUCATION PROGRAM											PS	PS	PS	

In Section 1-19-6.220, Parking Space Requirements and Dimensions, remove “, business, technical or trade” from “Commercial, business, technical or trade” under the Commercial Business and Personal Services section of the parking requirements and add “schools or education programs”.

Commercial Business and Personal Services	
Commercial, business, technical or trade school SCHOOL OR EDUCATION PROGRAM	1 for each 3 students

In Section 1-19-11.100 Definitions, add new definitions for “Commercial school or education program” and “Satellite university or college”.

COMMERCIAL SCHOOL OR EDUCATION PROGRAM. EDUCATION OR TRAINING IN BUSINESS, TECHNICAL, TRADE, COMMERCE, LANGUAGE, OR OTHER SIMILAR SPECIALTY SCHOOLS OR SATELLITE UNIVERSITY OR COLLEGE LOCATED IN AN OFFICE-TYPE SETTING.

SATELLITE UNIVERSITY OR COLLEGE. A SATELLITE BRANCH OR CAMPUS OF A COLLEGE OR UNIVERSITY THAT IS PHYSICALLY DETACHED FROM THE MAIN UNIVERSITY OR COLLEGE AREA THAT DOES NOT INCLUDE ADMINISTRATIVE OFFICES AND LIVING QUARTERS, AND IS SMALLER THAN THE MAIN CAMPUS OF AN INSTITUTION.

III. SCHOOL, PUBLIC OR PRIVATE

Both public and private schools are similar uses that are both currently allowed within the R1, R3, R5, R8, R12, R16, and VC zoning districts. However, a private school requires a Special Exception (E) process while a public school requires a Site Development Plan (PS) process within these zoning districts. Also, both the private and public schools, have a similar issue within the GC, ORI, LI, and GI zoning districts where the use may be allowed as a Temporary (T) use or as a Special Exception (E).

During the BoCC June 29, 2010 worksession, the BoCC directed Staff to consider and provide a recommendation on combining the Public and Private school use and definitions and allowing both Private and Public schools to have similar development review requirements within the R1, R3, R5, R8, R12, R16, VC, GC, ORI and LI zoning districts.

Staff did look into combining the definitions of Public School and Private Schools, however after further review the use of separate definitions is preferred. Combining the definitions may create future interpretation issues. Maintaining the separate use definitions makes a clear distinction between public and private use.

Proposed Text in **BOLD** text, deleted text in ~~strikethrough~~ text.

In Section 1-19-5.310 of the Use Table, replace the 'E' (special exception) requirement for "Private School" in the R1, R3, R5, R8, R12, R16, VC and LI zoning districts with 'PS' (site development plan) in the R1, R3, R5, R8, R12, R16, and VC zoning districts and 'T' (temporary) in the LI zone, consistent with the processing of public schools. Allow the use of a private school within the GC and ORI zoning districts as 'T' (temporary).

	Zoning Districts													
Uses	RC	A	R1	R3	R5	R8	R12	R16	VC	HS	GC	ORI	LI	GI
Institutional														
Private school			E PS	E PS	E PS	E PS	E PS	E PS	E PS		T	T	E T	

In section 1-19-5.310 Use Table, replace "Elementary or secondary school" within the Governmental and Nongovernmental Utilities section of the use table with "Public School" and to allow the use to be located in the R1, R3, R5, R8, R12, R16, and VC zoning districts as 'PS' and in the GC, ORI and LI zoning districts as 'T'.

	Zoning Districts													
Uses	RC	A	R1	R3	R5	R8	R12	R16	VC	HS	GC	ORI	LI	GI
Governmental and Nongovernmental Utilities														
Elementary or secondary school PUBLIC SCHOOL	-	-	PS	PS	PS	PS	PS	PS	PS	-	T	T	T	T

In section 1-19-11.100 Definitions, remove "professional schools, dance schools, business schools, trade schools, art schools, and similar facilities" from the definition of "School, Private". These uses have been included in the proposed definition of "Commercial School or Education Program". [See above]

SCHOOL, PRIVATE. A private educational program for students for the teaching of children ~~or adults~~ including primary and secondary schools, ~~professional schools, dance schools, business schools, trade schools, art schools, and similar facilities.~~

SCHOOL, PUBLIC. An educational program for students approved by the Maryland State Department of Education for the teaching of children or adults including elementary and secondary schools, and similar facilities. Charter schools funded by the state are included in this definition.

IV. BOARDING STABLES

The boarding of horses and associated activities have recently become an issue within the equine community. On June 14, 2010 staff met with representatives from the equine community, personnel from the Office of Economic Development and members of the BoCC.

During the July 1, 2010 BoCC worksession, the primary discussion revolved around the potential impact for larger commercial boarding stables and activities. The BoCC directed staff to further review potential peak hour trips associated with boarding stables and larger public events.

Working with DPDR, Staff researched the number of boarded horses needed to achieve 25 peak hour trips. It was determined that there would need to be 150 boarded horses to reach the 25 peak hour trip limit. The largest boarding stable in operation today in the County is 90 horses. After this study and the large number of horses needed to reach 25 trips, Staff did not see any purpose in placing a limitation on the number of boarded horses.

As for the events held at a boarding stable, activities associated with a sanctioned or similar equestrian competition would be permitted. However, large events that involve activities beyond a typical equestrian competition would require a temporary use permit per Section 1-19-8.700 of the Zoning Ordinance.

On July 12, 2010 staff met again with representatives from the equine community, personnel from the Office of Economic Development, and members of the BoCC. Staff additionally met with representatives from the equine community on September 13, 2010 to discuss the revisions to the proposed text amendment. Following the September meeting, staff continued to work on the proposed text amendment with the equine community for boarding stables and the following reflects the latest recommended changes.

Proposed Text in **BOLD** text, deleted text in ~~strikethrough~~ text.

In section 1-19-11.100 Definitions, add "Equine activities" with minor grammatical changes to the definition of Agricultural Activity.

AGRICULTURAL ACTIVITY. Land used exclusively as a bona fide agricultural operation by the owner or tenant. The use of land for agricultural purposes includes farming, viticulture (grape production), fish culture, animal and poultry husbandry, and **EQUINE ACTIVITIES**. ~~the n~~ **Necessary** accessory uses such as packing, treating, or storing of produce, composting and power generation from farm animal waste **ARE ALLOWED**; provided that the operation of the accessory use is clearly incidental to the agricultural activity. The business of intensive swine feeding operations, garbage feeding of hogs, fur farms or the raising of animals for use in medical or other tests or experiments, commercial slaughtering of livestock, poultry, fish or meat processing is excluded from this definition.

In section 1-19-11.100 Definitions, add the definition of Equine Activities.

EQUINE ACTIVITIES. EQUINE ACTIVITIES INCLUDE TEACHING EQUESTRIAN SKILLS, PARTICIPATING IN EQUESTRIAN COMPETITIONS, EXHIBITIONS OR OTHER DISPLAYS OF EQUESTRIAN SKILL, AS WELL AS THE CARING FOR, BREEDING, BOARDING, RIDING, OR TRAINING OF HORSES. ARENAS ARE PERMITTED IN CONJUNCTION WITH AN EQUINE ACTIVITY, SHALL NOT BE LOCATED IN THE FRONT YARD, AND SHALL BE SETBACK 100 FEET FROM ALL PROPERTY LINES. LIGHTING FOR OUTDOOR ARENAS SHALL NOT EXCEED 30 FEET IN HEIGHT AND IS SUBJECT TO SECTION 1-19-6.500 LIGHTING TYPE AND ILLUMINATION STANDARDS.

In section 1-19-11.100 Definitions, remove the definition of “Stable, Boarding” and “Stable, Commercial Boarding”.

~~**STABLE, BOARDING.** The use of property which may include accessory structure(s) for housing, sheltering, feeding and care of a maximum of 20 horses or ponies for a fee. A minimum of 1½ acres per horse shall be provided. Associated riding, jumping, individual instruction for those animals boarded at the stable, and unlit outdoor arenas are permitted.~~

~~**STABLE, COMMERCIAL BOARDING.** The use of property which may include accessory structure(s) for housing, sheltering, feeding and care of horses or ponies for a fee. A minimum of 1½ acres per horse shall be provided. Associated individual and group instruction in riding, jumping and showing for those animals boarded at the stable, and arenas with outdoor lighting are permitted. Such operations may also include a horse tack and saddlery shop. (See § 1-19-8.230.1.)~~

With this proposed change the ability to provide equine activities in a Residential zoning district would be allowed (P) by right subject to design regulations. However, the location of a stable or other structure and the number of horses allowed would be limited Section 1-19-8.240, of the Zoning Ordinance, while the location of an arena would be subject to the definition of Equine Activities.

AGENCY COMMENTS

Planning Staff referred the proposed amendments to other County agencies for input and no comments have been received.

The Citizens Zoning Review Committee (CZRC) during the review of the zoning ordinance did not specifically address these issues.

STAFF RECOMMENDATION

Hold a public hearing and provide a recommendation to the BoCC.

ENCLOSURES:

Exhibit #1: Staff Report

Exhibit #2: Proposed Zoning Text Amendments